TABLE OF AUTHORITIES—Continued

Page

Walker v. City of Hutchinson, 252 U.S. 112, 115 18

Walker v. Sauvinet, 92 U.S. 90 10

Warrick v. Moore County, 291 S.W. 950 19

Watson et. al. v. Glenn, 82 S.W. 2d 704 30

White v. White, 196 S.W. 508 20

Williams v. Beasley, 300 S.W. 193 ..... 12, 13

Williams v. People of State of N.Y., 337 U.S. 241 16

Wilson v. State, 121 S.W. 548 30

Wuchter v. Pizzutti, 276 U.S. 13 18

B. *Constitutional Provisions and Statutes*

Texas Constitution, Art. I, Sec. 15-a 21, 22

Texas Constitution, Art. V, Sec. 25 ..... 3, 9

U.S. C., Sec. 1257 (3) 2

Texas Mental Health Code, Art. 5547-33 ..... 9, 20

Texas Mental Health Code, Art. 5547-82 20

Texas Probate Code, Sec. 130 9

Texas Revised Civil Statutes, Art. 2092, Sec. 21 9

Texas Rules of Civil Procedure, Rule 7 30

Texas Rules of Civil Procedure, Rule 63 9

Texas Rules of Civil Procedure, Rule 173 ..... 3, 11

IN THE

Supreme Court of the United States

OCTOBER TERM 1965

No. .....

A. L. CROUCH, PROBATE JUDGE, *Petitioner*

v.

OLLIE STANLEY, ADMINSTRATOR, *Respondent*

Petition for Writ of Certiorari to the Court of Civil Appeals for the Eleventh Supreme Judicial District of Texas at Eastland

---

A. L. Crouch, Judge of the County Probate Court of Tarrant County, Texas, respectfully prays that a Writ of Certiorari issue to review the judgment of the Court of Civil Appeals for the Eleventh Supreme Judicial District of Texas at Eastland, entered in this cause on April 30, 1965.

OPINION BELOW

The judgment of the 153rd District Court of Tarrant County, Texas, in Cause No. 34055-C, granting mandamus to Ollie Stanley, Administrator, against A. L. Crouch, Probate Judge, was entered on April 30, 1964 (Appendix A).

The opinion rendered by the Court of Civil Appeals

for the Eleventh Supreme Judicial District of Texas at Eastland, on April 30, 1965, affirming the judgment of the District Court is reported at *390 SW2d 795* (Appendix B).

On October 6, 1965, the Supreme Court of Texas refused Petitioner's Application For Writ of Error, without opinion, 9 *Tex. Sup. Ct. Jnl.* 2 (Appendix C); and, on November 3, 1965, the Supreme Court of Texas overruled Petitioner's Motion for Rehearing of the Application for Writ of Error, *9 Tex. Sup. Ct. Jnl. 64* (Appendix C).

JURISDICTION

The judgment of the Court of Civil Appeals for the Eleventh Supreme Judicial District of Texas at Eastland was entered on April 30, 1965. The Supreme Court of Texas refused timely Application for Writ of Error on October 6, 1965; and overruled Petitioner's Motion for Rehearing on November 3, 1965, making final the decision of the Court of Civil Appeals.

The jurisdiction of the Supreme Court of the United States is invoked under *28 U.S.C., Section 1257 (3)*, in that the Texas Courts have deprived Petitioner of certain rights without due process of law, contrary to the Constitution of the United States of America.

QUESTIONS PRESENTED

1. Whether due process of law requires notice and opportunity to be heard, before a trial judge in a State court can make a judicial determination that a defendant in a civil cause pending in his court is mentally

incompetent and appoint a guardian ad litem to represent him in the lawsuit against his will.

2. Whether a State statute, as construed by the State courts, which authorizes appointment by trial judge of a guardian ad litem for an alleged incompetent defendant in a civil cause pending in his court and which does not require notice and opportunity to be heard, before judicial determination of alleged incompetency, is violative of due process of law.

3. Whether Petitioner was deprived of due process of Law by the trial court's denial to him of his right to trial by jury.

4. Whether Petitioner was deprived of due process of law by the trial court's denial to him of a fair and impartial hearing in a fair and impartial tribunal.

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

The Federal Constitutional Provisions involved are the Seventh Amendment and the Due Process Clause of the Fourteenth Amendment.

The State Statute involved is *Rule 173*, of *The Texas Rules of Civil Procedure*, (Appendix a), promulgated by the Supreme Court of Texas, under authority of Art. 5, Sec. 25, of *The Texas Constitution*, (Appendix b), which, according to *Church v. Crites*, 1963, 370 *SW2d 419*, ref. n.r.e., has all the effect of a State Statute.

STATEMENT OF THE CASE

On December 30, 1960, Petitioner, as Probate Judge

of Tarrant County, removed Ollie Stanley as Administrator of the Estate of William Roy Greene, Deceased, for mismanagement of said estate (Appendix 1) (Relator's Exhibits to Hearing of April 24, 1964, pp. 15-16), which order of removal was appealed by Mr. Stanley to the 48th District Court, where it remains undisposed of, although one of the attorneys in the case at bar recommended to the court that: ". . . if I were in Your Honor's place, I would require disposition of the appeal in the Forty-Eighth District Court before I issued any writ of mandamus." (SFA 6)

On March 24, 1964, Edward J. Greene, an heir of the Estate of William Roy Greene, Deceased, filed an Application for Mandamus (TR 2-4) against Petitioner, A. L. Crouch, Probate Judge, in the 153rd District Court of Tarrant County, Texas; and, seven days later, Ollie Stanley, Administrator of said estate, filed a Plea of Intervention (TR 8-9) in the lawsuit.

Personal service of citation was had upon the original Application, returnable April 30, 1964 (TR 6), but no citation was ever issued upon the Plea of Intervention (TR 8-9) which was delivered to Petitioner by United States mail (TR 31).

A written order for Petitioner to appear on April 7, 1964, and show cause why mandamus should not issue was served on Petitioner, March 24, 1964 (TR 7); and Petitioner made his conditional appearance in Court on that date, thirteen days before the citation was returnable, subject to a Plea in Abatement on the defective service of the Plea of Intervention (TR 31), and also subject to a Motion for Continuance (TR 14) and a Motion for Jury Trial (TR 12-13).

Shortly before trial time on April 7, 1964, Respondent filed an ex parte Lunacy Affidavit and Motion for Appointment of a Guardian Ad Litem for Petitioner as a non compos mentis (TR 20-21). The "hearing upon proponent's application for mandamus (SF 1)" turned into a guardianship hearing, although no notice of Respondent's motion had ever been served upon Petitioner, and the case of *Dean v Fuller*, 290 SW 829, holds that: "grant of exclusive original jurisdiction to County Courts to appoint guardians . . . is constitutional." The District Judge peremptorily appointed a guardian ad litem for Petitioner, without giving him a chance to be heard, and without one word of evidence, because "the pleadings filed . . . in the case suggest that his judgment and reasoning are . . . seriously impaired . . ." (SF 2), then promptly adjourned court. The order, when reduced to writing the next day provided for *two* guardians instead of one! (TR 37).

Before the next hearing, on April 24, 1964, Petitioner filed a Controverting Affidavit to the Lunacy Complaint (TR 44), and a Motion to Set Aside the Void Appointment of Guardians ad Litem (TR 40-43). But the District Judge overruled the motion without one word of evidence (SF A-2) and refused Petitioner the right to be heard except through a court appointed guardian ad litem (SFA 2) who was representing an adverse interest at the time (TR 55-62, Court of Civil Appeals Brief, pp. 113-121). Rather than submit to the services of an adverse guardian ad litem, Petitioner asked to be excused from any further participation in the hearing (SFA-4), and the trial proceeded to a conclusion in his absence (SFA-42).

The judgment of the District Court (Appendix

A) denied all relief to Edward J. Greene, the original Applicant, but granted Mandamus to Ollie Stanley, Administrator, who had never served Petitioner with personal citation. The Court of Civil Appeals affirmed the judgment of the District Court (Appendix B) and overruled Petitioner's Motion for Rehearing. On October 6, 1965, the Supreme Court of Texas refused Petitioner's Application for Writ of Error (Appendix C); and on November 3, 1965, overruled Petitioner's motion for Rehearing (Appendix C). Petitioner seeks the issuance of a Writ of Certiorari to review the judgment of the Court of Civil Appeals for the Eleventh Supreme Judicial District of Texas.

PRESENTATION OF FEDERAL QUESTIONS

Excerpts from the record show the following steps taken by Petitioner to preserve the Federal Questions:

In Petitioner's Motion for New Trial, filed in the 153rd District Court (Appendix I), Petitioner alleged that the court erred in appointing a guardian ad litem without notice, jury or hearing (TR 54, 56), in proceeding to trial on the merits without personal service and adequate notice (TR 61), and inferentially, in all 38 assignments of error, unfairness on the part of the trial judge.

Petitioner properly presented the Federal Questions to the Court of Civil Appeals in his Brief (pp. 105-124), in his Second Supplemental Brief (Appendix II), in his Motion for Rehearing (Appendix III), and inferentially, in all assignments of error in both his Brief and Motion for Rehearing, unfairness on the part of the trial judge.

Petitioner further preserved the Federal Questions

in his Application for Writ of Error to the Texas Supreme Court (Appendix IV), and in his Motion for Rehearing to the Texas Supreme Court (Appendix V).

REASONS FOR GRANTING THE WRIT

I. IMPORTANCE OF THE QUESTIONS

Aside from the obvious importance of these questions to Petitioner, who was adjudicated incompetent and had guardians appointed for him without the notice and opportunity to be heard before a jury of his peers guaranteed by the Federal and Texas Constitutions, the solution of the problems in this case will have far reaching ramifications.

A door has been opened to fraud on the part of unscrupulous confidence men who may now secure oil and gas leases, if not fee title itself, to lands far beyond the boundaries of Texas by an ex parte adjudication of incompetency of absentee land owners without the notice which non-residents have formerly been guaranteed, under *Henderson v. Shell Oil Co., Texas Supreme, Court*, 1948, 208 *SW* 2*d* 863, *cert. den.* 335 *U. S.* 884, of pending guardianship applications.

Also, it is not inconceivable that divorce, child custody, and adoption cases involving non-resident defendants will become avenues for ancillary ex parte adjudications of insanity by the spiteful and avaricious. Compounding the problem is the full faith and credit clause of the Constitution, as construed by this Court. U. S. Const., Art. IV, Section 1; 28 U. S. C., Sec. 1738; *Estin v. Estin*, 334 *U. S.* 541.

The Supreme Court of the United States has now been presented the strange doctrine that a trial judge

can legally appoint a guardian ad litem for any defendant who attempts to represent himself in a Texas court, merely by examining the pleadings filed in the case without notice, jury trial, or one word of evidence. The mischief that this procedure will create, if upheld by the Supreme Court, is incalculable. No such defendant would be safe from an adjudication of incompetency if he files one pleading or utters one word which displeases the trial judge. The peremptory appointment of guardians would overnight take the place of contempt procedures, and American citizens who have been deprived of their civil liberties by this unique device would soon be appealing to the Federal Courts for relief.

II. PETITIONER'S CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED

A. *Petitioner Was Denied His Constitutional Right to Adequate Notice And a Reasonable and Fair Opportunity of Being Heard.*

(1) Denial of Adequate Notice

Personal service was had upon the original Application for Mandamus (TR 5-6); but the Plea of Intervention was delivered to Petitioner by United States mail only (TR 49), which substituted service was void under Texas law, where, as here, no court order authorizing same appears of record. *Spencer v. Texas Factors, Inc.* 336 *SW2d* 699, *ref. n.r.e.* The Probate Judge filed a Plea in Abatement attacking the validity of the substituted service (TR 31), and also a Motion for Continuance (TR 14), prior to the hearing, which was set by the District Judge for April 7, 1964, thirteen

days before service of citation was returnable on the original Application (TR 6).

Immediately before trial time on April 7, 1964, Respondent filed an Ex Parte Lunacy Affidavit and Motion for Appointment of Guardian Ad Litem for Petitioner (TR 20-21), although *Rule* 63, *of The Texas Rules of Civil Procedure*, provides that no amendment of pleadings may be filed within seven days of trial time without leave of court, which under *Art.* 2092, *Sec.* 21, *Revised Civil Statutes of Texas*, must be in writing. No notice of this motion was ever served upon Petitioner, and no court order ever authorized the late filing thereof; but the "hearing upon proponent's application for mandamus" (SF 1) turned into a guardianship hearing, without the "service of notice of such trial upon the person under inquiry" required by *Art.* 1, *Sec.* 15-*a of The Texas Constitution.* (Appendix c) *Art.* 5547-33, of the *Texas Mental Health Code* says: "The proposed patient shall be personally served with a copy of the Application and written notice of the time and place of hearing thereon . . ." And *Sec.* 130 *of The Texas Probate Code* provides that: ". . . persons alleged to be of unsound mind . . . shall be personally served with citation to appear and answer the application for the appointment of a guardian."

Florence v. Crawford, 351 *SW2d* 77 emphasizes the necessity of compliance with statutory procedures relative to alleged mentally ill persons. Service, when not otherwise defined, means personal service, *Erwin v. Holliday*, 112 *SW2d* 177; and substituted service is void under Texas law where no court order authorizing same appears of record, *Spencer v. Texas Factors, Inc., supra.* Notice must be actually served upon a person

charged with being a lunatic. *Hager v. Pacific Mutual Life Ins. Co.*, 43 *F Sup* 22.

The Special Rules under which the District Courts of Tarrant County were operating at the time of the trial in question (made by the District Judges themselves on October 1, 1963) contain the following Provisions with reference to the setting of cases for trial: "On the first Monday in each calendar month the judge of each court may, and so far as practicable shall, set for trial during the calendar month next after the month during which the setting is made all contested jury and non-jury cases which are required to be set. ***Nothing herein shall preclude continuation of the present practice of setting contested non-jury cases for trial by giving the required ten days written notice to the opposing party of the week of such setting.*** No case shall be given a special setting, except in those instances where it is required by law, unless same has been pending for a period of at least 6 months, and then only in cases of unusual hardship." No reason appears in the record why Judge Craik departed from the very rules of procedure which he himself helped to formulate with reference to the setting of cases for trial in his own court.

The Trial judge refused to consider Petitioner's Motion for Continuance (TR 14), although *Piedmont Fire Ins. Co. v. Dunlap*, 193 *SW2d* 853, *ref. n.r.e.*, holds that: "Averments of first application for continuance, in substantial compliance with rules, properly verified and uncontroverted, must be accepted as true." Due process of law is process according to the law of the land. This process in the States is regulated by the law of the State. *Walker v. Sauvinet*, 92 *US* 90. The

notice must be of such a nature as reasonably to convey the required information (the only notice served upon Petitioner was of a mandamus hearing), *Grannis v. Ordean*, 234 *US* 385, and it must afford a reasonable time for those interested to make their appearance. *Roller v. Holly*, 176 *US* 398.

(2) Denial of Opportunity to Be Heard

The law presumes that an adult person is of sound mind and is capable of managing his own affairs, and such presumption is not destroyed by the filing of a petition by even a "next friend" alleging that such person is of weak or unsound mind. *Lindley v. Lindley*, 113 *S.W.* 750; *Kaplan v. Kaplan*, 378 *S.W.* 2*d* 211, *ref. den.; Damron v. Rankin*, 34 *S.W.* 2*d* 360 (Eastland Court of Civil Appeals).

Before a guardian ad litem may be appointed to represent any person in a lawsuit in Texas, it must be made to appear that he falls within one of the classes named in *Rule* 173, *Texas Rules of Civil Procedure*, i. e., "a minor, lunatic, idiot or non compos mentis." (Appendix b) *Henderson v. Applegate*, 203 *S.W.* 2*d* 548; *Koppe v. Groginsky* 132 *S.W.* 984.

The allegation of Respondent is that Petitioner is a "non compos mentis," but no evidence was offered, nor was it ever claimed that Petitioner had been declared non compos mentis prior to the institution of the mandamus lawsuit. Petitioner controverted the lunacy affidavit and demanded a jury trial, to which he was entitled under the Constitution of Texas and the United States. And even Respondent's attorney, in his motion filed on April 9, 1964, two days after the appointment of guardians admitted (TR 38) that "jus-

tice might be done" only through consideration of some type of medical evidence, but the District judge apparently did not agree with his view of the law.

The right of a person to manage, control, and dispose of his own property is a valuable one, secured by constitutional provisions, and such rights should not be wholly denied, based upon a mere conclusion of a single individual that he is mentally incapable in a specified manner. *Greenwood v. Furr*, 251 *S.W.* 332. An adjudication (of incompetency) essentially implies a hearing by a court after notice of legal evidence on the factual issues involved. *Genzer v. Fillup*, 134 *S.W.* 2*d* 730, *err. dis.* There must be "unimpeachable proof" before a judge can tell a litigant he is insane and appoint a guardian ad litem for him, even when the litigant requests the appointment to be made. *Eidinoff v. Andress*, 321 *S.W.* 2*d* 368. The burden of proof is upon him who asserts the lack of such capacity. To overcome this presumption . . ., there must be more than a mere equilibrium of testimony. And the evidence must clearly establish the charge of such incapacity. *Hagar v. Pacific Mutual Life Insurance Co.*, 43 *F. Sup.* 22.

The Court of Civil Appeals of Eastland, citing the *Koppe* case with approval, held in the case of *Williams v. Beasley*, 300 *S.W.* 193, that the appointment of such a guardian ad litem is not necessary except it be shown that the defendant is of unsound mind. And in the case of *Damron v. Rankin*, 34 *S.W.* 2*d* 360, The Eastland Court of Civil Appeals also held that there had to be a hearing and judicial determination of incompetency. "Such hearing, to our minds," the court said, "signifies a judicial determination by the court from legitimate

testimony of the issue of insanity of the person charged with being insane. It becomes our duty, not only to reverse the judgment of the trial court, but to here render the same."

The Eastland Court of Civil Appeals in refusing to strike down the void appointment of guardians ad litem in the case at bar, is disregarding the law as formerly determined by itself in both *Williams v. Beasley*, and *Damron v. Rankin*. The Supreme Court of the United States, in *Ex Parte Bollman*, 8 *U.S.* 75, 86, has declared: "Shall it be said, that each individual judge may rightfully disregard the decisions of the court to which he belongs, in opposition to their solemn judgment?"

On April 7, 1964, Petitioner made a conditional appearance in the 153rd District for what everyone, including the official court reporter, thought would be "a hearing upon proponent's application for mandamus" (SF 1), little realizing that he had been entrapped into a guardianship hearing, under Rule 173, without warning of any kind that the District Judge would act upon a lunacy complaint filed in the wrong court, which had never been served upon Petitioner and which had not been filed until shortly before trial time.

Without any consideration of pleas in abatement and preliminary motions, including one for disqualification of the District Judge (TR 34), one for continuance (TR 14), and one for jury trial (TR 12), the District Judge, without permitting the pleadings to be read, without allowing opening statements, without swearing in witnesses who were present under subpoena (TR 17-18) (TR 19), and without hearing one word of evidence (although attorney for Respondent expected

to testify — TR 20-21), announced that he was appointing a guardian ad litem for Petitioner because "the pleadings filed . . . in the case suggest that his judgment and reasoning are . . . seriously impaired . . ." (SF 2) During the course of this unusual pronouncement, Petitioner was ordered to be seated four separate times as he vainly attempted to exercise his constitutional right to be heard in his own defense, and to demand a continuance and a jury trial (SF 2).

As an example of the record of the unusual hearing which took place upon that occasion, consider the following (SF 3):

JUDGE CROUCH: Your Honor, I think this is the most infamous statement that has ever come from the bench of a court in Texas. You are declaring me mentally ill or even insane without the benefit of a jury trial, without the benefit of one word of evidence, without the benefit of examination of doctors. This is a pure political conspiracy to destroy me. You are not properly sitting in judgment on this case. You should disqualify yourself under the law. I have filed a motion to disqualify you, and I think that motion should be considered before any action whatsoever is taken by Your Honor, as Judge of this court.

THE COURT: If the ad litem wants to present that motion, I'll probably grant it.

Another hearing, on the merits of the mandamus case, took place upon April 24, 1964. Before this hearing, Petitioner had filed a Controverting Affidavit to the Lunacy Complaint (TR 44) and a Motion to Set Aside the Void Appointment of Guardians ad Litem. But the District Judge overruled the motion without

permitting one word of evidence to be given and without allowing petitioner to argue the motion (SFA 2), or to be heard thereafter except through a guardian ad litem.

Consider the following excerpt from the record of this remarkable proceeding (SFA 2-3):

THE COURT: Are you ready, Judge?

JUDGE CROUCH: I am ready to present my own case, yes, sir.

THE COURT: Well, I am going to require the guardian ad litem to remain with you.

JUDGE CROUCH: Well, now, Your Honor, I have a motion to set aside the appointment of the guardians.

THE COURT: Yes, I've read your motion and I'm going to overrule it.

JUDGE CROUCH: You're overruling my motion without one word of evidence, without one statement from myself?

THE COURT: Yes, I'm overruling your motion, I'll let you perfect the record on it and make your bill of exceptions, introduce all the proof that you want to at the conclusion of the hearing.

JUDGE CROUCH: Let the record show that I strongly object to the Court's having appointed guardians for me without due process of law; that he has arbitrarily, peremptorily appointed guardians ad litem for me after expressing from the bench the decision that I was not incompetent; appointing guardians which is an implied finding that I am incompetent. He did this without notice, without hearing, without a jury, which I had requested, without one word of evidence from

doctor or layman, without one chance for me to represent myself or by counsel, without one chance for me to make a plea in my own behalf as is the constitutional right of every American citizen.

THE COURT: I've already told you I'm going to give you a full bill of exceptions and let you perfect your record on it at the conclusion of the hearing.

To preserve his right of self representation and his right to jury trial, petitioner asked to be excused from further participation in the hearing at this point. It would be error to force counsel not of his own choice upon him, *U.S. ex rel Puntari v. Maroney*, 220 *F. Supp.* 801, and where a person elects to appear by attorney he waives the privilege of appearing for himself. *Brazier v. Jeary*, 256 *F* 2*d* 474. The case was then decided adversely to Petitioner without his having had the opportunity to present his evidence, *Saunders v. Shaw*, 244 *U. S.* 317, 319, to examine adverse witnesses, *Williams v. People of State of N.Y.*, 377 *U.S.* 241, and to introduce rebuttal evidence, *Saunders v. Shaw*, 244 *U.S.* 317.

It is interesting to note that although Respondent's attorney was able to persuade the District Judge in the case at bar to appoint two guardians for Petitioner without one word of evidence, a few months later, when he was defending a client charged with murdering a two year old girl "by slapping, striking, hitting, and beating her with his hand and fist and immersing her in water contained in a bathtub, and by pouring hot water upon her body" (*Clifford Darrell Carroll v. State of Texas*, conviction sustained by Texas Court of Criminal Appeals, in Cause No. 38373, on October 4, 1965, but as yet unreported) he expressed

the opinion that "the science of psychiatry is too complex for the average person to understand" and that "the sanity of any accused person believed to be mentally ill should be determined by a panel of three qualified psychiatrists." The defense attorney also observed, in connection with his motion for a new trial for Carrol, that "a man cannot be found to be mentally ill in a non-criminal case without the expert opinions of at least two qualified physicians." (Appendix 5)

Petitioner alleged without contradiction in the record that both Ernest May and Thorp Andrews, his two guardians, had made statements in the presence of witnesses that they did not consider him incompetent or in need of guardians (TR 42); and Petitioner's family physician (Appendix 3), as well as the only two psychiatrists practicing in the Probate Court at the time (Appendix 4) had publicly stated that Petitioner was neither mentally ill or incompetent, yet these five persons were never permitted to express their opinions from the witness stand.

Whether in fact the individual has a defense . . . is not important. To assume that he has none, and therefore that he is not entitled to his day in Court, is to assume against him the very point he may wish to contest. *Rees v. City of Watertown*, 86 *U.S.* 107. The essential elements of due process are notice and opportunity to defend. In determining whether such rights were denied we are governed by the substance of things and not by mere form. *Simon v. Craft*, 182 *U.S.* 427.

Due process of law has been repeatedly interpreted by this court to mean not only that a party shall have notice, but that he shall have a reasonable and fair op-

portunity of being heard. *Hagar v. Reclamation Dist.*, 111 *U.S.* 701.

Justice Jackson, in *Mullane v. Central Hanover Bank & Trust Co.*, 339 *U.S.* 306, quoted with approval the dictum of *Grannis v. Ordean*, 234 *U.S.* 385, that the fundamental requisite of due process of law is the opportunity to be heard.

(3) Rule 173 is Unconstitutional in Failing to Provide Notice And Hearing

In *Coe v. Armour Fertilizer Works*, 237 *U.S.* 413, 424; and in *Wuchter v. Pizzutti*, 276 *U.S.* 13, it was held that "in judicial proceedings . . . notice must be provided as an essential part of the statutory provision and not as a mere matter of favor or grace."

This Court, in *Walker v. City of Hutchinson*, 252 *U.S.* 112, 115, held that a statute which provides for a hearing but which did not provide for notice "reasonably calculated to inform the parties of proceedings which may directly and adversely affect their legally protected interest" was unconstitutional.

In *Armstrong v. Manzo*, 14 L *ed* 2*d* 62, 1965, the Texas Adoption Statute was, in effect, ruled unconstitutional when the court said: "A violation of a divorced father's right of due process by failing to give him notice of the pendency of proceedings for the adoption of his child is not cured by granting him a hearing on his motion to set aside the adoption decree. A fundamental requirement of due process is 'the opportunity to be heard.' *Grannis v. Ordean*, 234 *U.S.* 385, 394. It is an opportunity which must be granted at a meaningful time in a meaningful manner. The trial court could have fully accorded this right to the petitioner

only by granting his Motion to set aside the decree and consider the case anew. Only that would have wiped the slate clean. Only that would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place. His motion should have been granted."

Under the rule of the Armstrong case, Petitioner, who was denied an opportunity to be heard in two separate hearings, should have had his motion for new trial granted, along with his motion to set aside the appointment of guardians ad litem. Only that would have wiped the slate clean.

It would thus appear that Rule 173, which, as construed by the State Courts, authorizes the appointment of a guardian ad litem for an alleged incompetent defendant in a lawsuit without notice or opportunity to be heard at a meaningful time in a meaningful manner, is violative of due process and unconstitutional.

B. *Petitioner Was Denied His Constitutional Right to Trial By Jury.*

Where statutes are properly followed and service and notice had on person alleged to be non compos mentis, as provided by statute, appointment of guardian without actual jury trial is valid, though it would be error to refuse jury trial if one were demanded. *Bearden v. Texas Co., Com. App.*, 60 *S.W. 2d* 1031 *Henderson v. Applegate*, 203 *S.W. 2d* 548, *ref. n.r.e., Fitzgerald v. Bonham*, 247 *S.W. 2d* 265, *ref. n.r.e., Warrick v. Moore County*, 291 *S.W.* 950.

Although Respondent's attorney has expressed the opinion that "he doesn't believe it's morally right for 12 laymen to determine the sanity of any person"

(Appendix 5), he admits in his Court of Civil Appeals Brief, at Page 17, that Petitioner's ". . . conduct, like his pleadings, demonstrate the only issue of fact, which if properly raised would have been determined by a jury and would be whether or not . . . (he) was of sound mind, legally accountable for his acts of conduct."

The Texas Supreme Court, in *White v. White*, 196 *SW* 508, set aside as unconstitutional a statute passed by the Texas legislature in 1913, which substituted a Commission of Doctors in lieu of a jury for the purpose of determining the question of lunacy, holding that a jury trial was constitutionally required in lunacy proceedings because such was required by the English Common Law, and that the Common Law had been adopted by the Republic of Texas preceding the Constitution of the State, which contains the following provision: "The right to trial by jury shall remain inviolate" (Article 1, Section 15). Rule 173 (Appendix a), as construed by the State Courts, substitutes one layman, rather than a Commission of Doctors, for the constitutionally required jury, so how can it be permitted to stand?

In the case of *Swinford v. Logue*, 313 *SW2d* 542, *Article* 5547-82 of the *Texas Mental Health Code*, was ruled unconstitutional by the Court of Civil Appeals at Waco, because it failed to provide a trial by jury in restoration hearings. The District Judge, in the case at bar, not only declared Petitioner incompetent without the intervention of a jury, but also attempted to "restore" him to competency, without the intervention of a jury, by substituting an "attorney ad litem" for the "guardian ad litem" without ever setting aside the

void order of appointment of "guardians ad litem" complained of by Petitioner and without ever granting Petitioner his day in court on either the determination of incompetency or competency.

Judge Fly, in *Clark v. Matthews*, 5 *SW2d* 221, commenting that the inapt language of the Texas statute "might lead to the conclusion that the commitment could be made on an ex parte hearing of the certificate by the County Judge," released M. D. Clark by writ of habeas corpus from a state mental hospital and went on to say:

"The Constitution and laws of Texas jealously protect the liberties of the citizens of the commonwealth, and throw about each citizen, sane or insane, the safeguards of being heard in person or by attorney, or *by both* (emphasis added), before a jury of his countrymen. If the rights of any class of persons should be more closely and sacredly guarded than another, it is that unfortunate individual who, rightfully or wrongfully, is charged with having a mind diseased or a reason dethroned."

In the case of *Hager v. Pacific Mutual Life Ins. Co.*, 43 *F. Sup.* 22, it was held that: "Under the Federal and Kentucky Constitutions a person cannot be declared incompetent . . . without the intervention of a jury and a verdict declaring him to be *non sui juris*. Notice must be actually served upon a person charged with being a lunatic, and no person for the alleged lunatic has the right to waive a trial by jury." *The Bill of Rights of the Kentucky Constitution, Sec.* 7, provides that: "The ancient mode of trial by jury shall be sacred, and the right thereof remain inviolate . . .", while *Art.* 1, *Sec.* 15 of *The Texas Constitution* pro-

vides, "The right to trial by jury shall remain inviolate." And *Art.* 1, *Sec.* 15-*a* (Appendix c), of *The Texas Constitution*, added November 6, 1956, requires any law enacted by the State Legislature for the "adjudication of insanity" to provide for "a method of service of notice of such trial upon the person under inquiry and of his right to demand a trial by jury."

Petitioner having filed a timely Motion for Jury Trial (TR 12-13), and having orally repeated his demand for a jury trial in open court on two occasions (SF 3 and SFA 2), was entitled, under both the Federal and Texas Constitutions, to have a jury pass on his competency and the need for guardians over his person; and Judge Craik had no more right to usurp the function of the jury in this regard, by reason of the "inapt" language of Rule 173, than the County Judge of Uvalde County had the right to adjudicate M. D. Clark of unsound mind based solely on "an ex parte hearing of the certificate." At least the certificate considered by the Judge of Uvalde County was signed by "two properly qualified and licensed physicians," instead of by the attorney for an adverse litigant in the case.

The right (to jury trial) guaranteed by the Federal Constitution is one of substance, not mere form or procedure. But it is a substantive right which flows from the Federal Constitution which is the Supreme law of the land, and which cannot be impaired or taken away by state constitutional *or statutory provisions* (emphasis added.) *Diedrich v. American News Co.*, 128 *F* 2*d* 144.

C. *Petitioner Was Denied His Constitutional Right to a Fair And Impartial Hearing.*

As previously pointed out, the District Judge appointed two guardians ad litem for Petitioner, who was presumed to be sane under the law, without citation, jury trial, one word of evidence, or opportunity for Petitioner to be heard in his own defense. One of these "guardians" was excused for illness (SFA 9), leaving only Ernest May to represent Petitioner.

The Supreme Court of Texas, in the case of *Lindly v. Lindly*, 113 *SW* 752, held that courts should not allow the representation of incompetent persons to suits by those adversely interested. And Section 6, of the Cannon of Ethics of the Texas Bar Association, reads as follows: "It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts." (TR 11)

It was developed at the hearing of April 24, 1964, that not only had Ernest May given legal advice to Edward J. Greene, and referred him to Al Clyde (SFA 35), who filed the mandamus case against Petitioner, but that Ernest May had also had a pre-trial conference with the District Judge without the knowledge or consent of Petitioner and had made certain recommendations, which the court "had given some study," (SFA 6) before the date of hearing.

In his Motion for New Trial (TR 55), Petitioner alleged that Ernest May had actually represented C. C. Peters, who, according to an affidavit of the widow, defrauded the heirs of the estate of several thousand dollars (TR 55, 62) and "that the said Ernest May was placed in a conflict of interest situation by his purported appointment, and that the Hon. Harold Craik

knew, or should have known by the exercise of reasonable diligence . . ." (TR 55).

The official records of the District Clerk's office of Tarrant County, Texas, reveal that Ernest May had actually represented C. C. Peters in three separate lawsuits during the eighteen months period immediately preceding his appointment as ad litem:

(1) *C. C. Peters v. Joe Pearson et al., No.* 27296-C, filed in the 17th District Court, on October 10, 1962. Judgment recorded, Book A105, Page 04, November 16, 1962, signed by Ernest May as attorney for C. C. Peters and Harold Craik as presiding judge.

(2) *C. C. Peters v. Glens Falls Insurance Co., No.* 27750-*C*, filed in the 153rd District Court, on December 12, 1962. Judgment recorded Book D42, Pages 12-13, August 1, 1963, signed by Ernest May as attorney for C. C. Peters and Harold Craik as Judge. District Court judgment for C. C. Peters, *notwithstanding a jury verdict*, was affirmed by the Fort Worth Court of Civil Appeals May 22, 1964, only 28 days after the mandamus hearing, but later reversed by the Supreme Court of Texas, as reported 379 *SW* 2*d* 946 and 386 *SW* 2*d* 529.

(3) *C. C. Peters v. Lewis Farmer, et ux., No.* 28213-*C*, filed in the 67th District Court, on January 7, 1963. Judgment recorded, Book B84, Page 507, March 11, 1963, signed by Ernest May as attorney for C. C. Peters and Harris Brewster as judge.

Petitioner had subpoenaed Ernest May as an adverse witness (TR 46), and the District Judge swore him in (SFA 10), but Petitioner was refused the right to question Ernest May concerning the truthfulness of

Petitioner's uncontroverted allegation in his Motion to Set Aside Void Appointment of Guardians Ad Litem (TR 42) that: "Both Ernest May and Thorp Andrews have stated to this defendant and other persons that in their opinion A. L. Crouch is of sound mind and is in no need of a guardian." Also, of course, Petitioner wanted to question Mr. May about his representation of C. C. Peters, which "the Hon. Harold Craik knew, or should have known by the exercise of reasonable diligence." (TR 55). (Incidentally, Ernest May is now attorney of record for Judge Craik himself, in a lawsuit styled *J. H. Craik v. Elven W. Watkins, Jr., No.* 41453-*C*, presently pending in the 67th District Court of Tarrant County.)

The case at bar presents a fact situation remarkably like that described in the case of *Roberts v. Anderson*, 66 *Fed. Rep. 2d* 874, wherein the State Court had appointed a guardian for an Indian woman by the name of Hanna Anderson, which appointment was subsequently set aside as void for lack of jurisdiction. The State Court also appointed an ad litem not of her own choosing to represent her in a lawsuit involving the title to real estate, and, although the appointment was a "nullity," the ad litem "was the only counsel for her to whom the court accorded full recognition;" and the Federal Court found that Hanna Anderson had been denied her constitutional right to be heard through counsel of her choice.

A timely Motion to Disqualify the District Judge (TR 34-36) was denied three separate times without evidence or opportunity for Petitioner to be heard (SF 3, 4, 6), the District Judge finally declaring: "Now I am not going to listen to your motion, A. L. . . . I have

appointed an ad litem for you . . ." Then Judge Craik made an offer three separate times (SF 3, 4, 6) to disqualify himself if Petitioner would only acquiesce in the void and unconstitutional appointment of a guardian to make the motion for him! The ad litem not only refused to present the motion, which he was under a duty to do, but agreed that the Judge was not disqualified and took no exception to the overruling of the motion for disqualification (SF 7).

Judge Craik also overruled the Motion for Jury Trial (SFA 8), and the Motion for Continuance (SFA 8), without one word of objection from the ad litem, who was too busy pointing out that "the pleadings of this case are in dreadful shape," (SFA 5) even as the ad litem in the Anderson case volunteered a hearsay opinion that his "client," Hanna Anderson, the poor Indian woman whose land was about to be taken away from her, had been the mother of an illegitimate child. Before one witness had been sworn in, the guardian ad litem for Petitioner heard without objection the District Judge's decision against his "ward" (SFA 6-7), and announced for the record that: "I don't propose to carry forward any appeal," (SFA 9) although *Ex Parte Caldwell*, 383 *SW* 2*d* 587, recently held it reversible error for appointed counsel to fail to give notice of appeal.

Guardians ad Litem can make no concessions and cannot waive or admit any substantial rights. *Greathouse v. Ft. Worth and Denver City Ry. Co., Comm. of App. of Texas*, 65 *SW* 2*d* 762. If the trial court sees that the ward's interest is not properly protected, it is the court's duty to promptly interpose in the ward's behalf to remedy the error, and if necessary to remove

the guardian ad litem and appoint another and grant a new trial. *Peters v. Allen*, 296 *SW* 929. "Due process" . . . requires that . . . the hearing must be a real one, and not a sham or a pretense. *Palko v. State of Connecticut, Conn.*, 1937, 302 *U.S.* 319.

In his Motion to Disqualify the Trial Judge (TR 34-36), Petitioner alleged that: "On Wednesday, March 25, 1964, Judge J. Harold Craik publicly branded this defendant as "having a reckless disregard for the truth" on the front page of the Fort Worth Star-Telegram . . ." (TR 35). This allegation was never denied in either the pleadings or the evidence; yet Judge Craik proceeded to usurp the function of a jury by deciding *on the credibility of Petitioner as a witness* and by determining disputed fact issues (TR 78) on April 24, 1964, less than one month later!

In the recent case of *Sheppard v. Maxwell*, 231 *Fed. Sup.* 37, a Federal District Court held that: "Trial judge's remarks that habeas corpus petitioner was guilty removed presumption that trial judge was impartial and raised presumption that he was prejudiced against petitioner and petitioner was denied his constitutional rights when the trial judge failed to disqualify himself at state court trial."

But Judge Craik was not content with prejudging the credibility of the Probate Judge one month in advance of the trial, he even went so far as to announce his decision in open court before the witnesses were even sworn in: "There's only one real issue in the case, and that is whether Judge Crouch should be required to rule on this final account that's been filed like the law provides . . . The court can't permit him to just sit by and refuse to take any action at all with regard

to the account that's been filed. It should be acted on." (SF 6-7) It is a travesty on justice to allow a judge who has announced his decision . . . prior to the trial to sit in judgment at the trial. *Ungar v. Sarafite*, 11 *L. ed.* 2*d* 921, 938.

The District Judge, in the Judgment (TR 47-48) and Writ of Mandamus (TR 49-50) orders Petitioner "to comply with Article 408 of the Probate Code;" but this Article, as quoted in the opinion of the Court of Civil Appeals, requires the Probate Judge to "examine the account for final settlement and the vouchers accompanying same," although no vouchers have ever been tendered to Petitioner, and he has thus been commanded to perform an impossible thing.

The District Judge also, in the same instruments, orders the Probate Judge "to determine to whom notices should be directed by written order." Since the undisputed evidence is to the effect that poster notices had already been "on the board ten days" (SFA 13-14), it is obvious that the District Judge is mandamusing the Probate Judge to determine to whom personal citations should be directed, although Petitioner in his Original Answer (TR 22-27,-26) alleged that the so-called Final Account was defective in that it failed to show, as required by Section 405 (6) of the Texas Probate Code: "The persons entitled to receive such estate, their relationship to the decedent, and their residence, if known . . ." Since the Probate Judge has never been furnished with the names and addresses of the heirs of the estate in either the pleadings or the evidence, he has thus been commanded to perform another impossible thing, i. e., to cause personal citations to be issued to persons whose names and addresses are completely unknown to him.

After denying Petitioner a jury on the theory that there were "no fact issues for the jury to determine" (SR 8) (TR 83, 84), the District Judge made 18 separate "findings of fact" (TR 78-84), many of them without any basis in the pleadings or the evidence, but allegedly supporting six "conclusions of law" (TR 84), which form the foundation for the judgment complained of, although it has been held that: "A conclusion of law falls, and constitutes reversible error, if it is based on findings of fact that are unsupported by the evidence." *Durham v. Fort Worth Tent & Awning Co.*, 271 *SW* 2*d* 181, *wr. dismd. w. o. j.*

The very first "findings of fact" of the District Judge are as follows: "1. The intervenor, Ollie Stanley, is the duly appointed, qualified and acting administrator of the estate of *Edward J. Greene, deceased,* (emphasis added) . . . and said administrator has served in such capacity since February 1959. 2. On the *twenty-second day of August*, 1963, the administrator filed his final account with *said estate* (emphasis added) . . ." (TR 78) These two "findings" are especially significant, in that Petitioner is appealing from a judgment (TR 47-48) and writ of mandamus (TR 49-50) ordering him to act on a final account of the estate of *William Roy Greene, deceased,* filed on *August* 19, 1963! The District Judge has no "findings of fact" that William Roy Greene is deceased, or that Ollie Stanley was ever appointed administrator of his estate, or that any final account was ever filed by anybody in the William Roy Greene estate. And it is humanly impossible for the Probate Judge to act on a final account in either the Edward J. Greene estate or the William Roy Greene estate, dated August 19, 1963 or August

22, 1963, since the only two final accounts ever filed or offered into evidence in either estate were dated "5/14/63" and "8/26/63" (TR 20).

The District Judge included in his alleged "findings of fact" the following observations concerning Petitioner:

"(a) the various pleadings prepared and filed by the Respondent in this case indicate that his judgment and reasoning have become seriously impaired." In the case of *Watson et al. v. Glenn*, 82 *SW* 2d 704, 705, it was held that: ". . . persons *non sui juris* cannot themselves waive any rights and it has been uniformly held that a guardian ad litem cannot do so for them, either by pleading or otherwise."

"(b) It is the general opinion among lawyers and psychiatrists practicing in his court that the Respondent is mentally ill." Under Texas law, insanity cannot be proved by general reputation, *Wilson v. State*, 121 *SW* 548, nor by what third persons have said, *Montgomery v. State*, 151 *SW* 813.

"(c) The Respondent's lack of understanding of law, procedure, and ethics is such that he should not be permitted to represent himself." *Rule* 7, *of The Texas Rules of Civil Procedure* guarantees to any party to a suit, whether lawyer or layman, expert or novice, the right to "appear and prosecute or defend his rights therein, either in person or by an attorney." And in *Picking v. Pennsylvania Railway Co.*, 151 *F.* 2d 240, 244, the court held that where a member of the bar appeared *pro se* in a suit for the protection of civil rights, the court should endeavor to construe the pleadings, however inept, without regard for technicalities.

Also included among the most flagrantly unsubstantiated "findings of fact" are the following: "It is a matter of common knowledge that the Respondent has the dubious distinction of being unable to get along with anyone dealing with him in his official capacity." (TR 83-84). And, "He has little regard for the truth and is an incompetent bungler." (TR 84)

Perhaps the most startling "findings of fact" made by the District Judge are based on alleged hearsay statements of two members of the local bar association who had been dead for several years before the date of the trial. One of such "findings" is to the effect that Petitioner's former law partner, Pat Lambert, Jr., had denied voting for Petitioner in a certain preferential bar ballot (TR 83). The other "finding" is as follows: "As one of our late great lawyers once said of the Respondent, 'His election was the result of a political accident.' " Whether this statement refers to Petitioner's election to his first term as Probate Judge or his second term is not clear from the record. (TR 83)

When the remarks of the judge during the course of the trial, or his manner of handling the trial, clearly indicate a hostility to one of the parties, or an unwarranted prejudgment of the merits of the case, or an alignment on the part of the court with one of the parties for the purpose of furthering or supporting the contentions of such party, the judge indicates . . . a personal bias and prejudice which renders invalid any resulting judgment in favor of the party so favored. *Knapp v. Kinsey*, 232 *F. 2d* 458; *Crower v. Di Manno*, 225 *F 2d* 652.

Although not included in the official record of the "sanity" hearing, *The Fort Worth Star-Telegram* re-

ported, as part of the *res gestae*, the following statement made by Respondent's attorney to Petitioner, immediately following the appointment of guardians: "The next time you charge anybody with being a thief, you better do it where you can answer to it." (Appendix 3). Test of whether State sanity hearing constituted denial of due process is whether it caused denial of that fundamental fairness essential to the concept of justice. *Urbano v. State*, 225 *Fed. Supp.* 798.

One of the fundamental rights of a litigant is that he is entitled to a fair trial in a fair tribunal, and that fairness requires an absence of actual bias or prejudice in trial of case, and if this basic principle is violated the judgment must be reversed. *In Re Murchison*, 349 *U. S.* 133 136; *Beyer v. U. S.*, 255 *U.S.* 22; *Moskun v. U. S.*, 143 *F* 2*d* 129, 130; *N. L. R. B. v. Phelps*, 136 *F.* 2*d* 562; *U. S. ex rel Meers v. Wilkinson*, 326 *F* 2*d* 135; and *Amos Treat & Co. v. Securities & Exchange Commission*, 306 *F* 2*d* 260.

III. THE SPECIFIC QUESTIONS HAVE NOT BEEN PRESENTED TO THE COURT BEFORE

Petitioner has been unable to discover a previous case in this Court dealing with the questions brought before the Court by this Petition. Closest in point is *Henderson v. Shell Oil Co.* 1948, *Texas Supreme Court*, 208 *S.W.* 2*d* 863, *cert. den.* 335 *U.S.* 884, wherein it was decided that a non-resident defendant in an *in rem* action could be adjudicated incompetent upon formal hearing of an application for the appointment of a guardian, where there had been notice by posting in

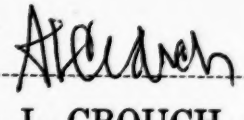
Texas, plus some sort of nonresident notice served on the alleged incompetent in Missouri.

Another mandamus case, which is almost in point is that of *Rees v. City of Watertown*, 86 *U.S.* 107, 122, wherein the court said: "This summary proceeding would involve a violation of the rights of the latter. He has never been heard in court. He has had no opportunity to establish a defence . . . no man shall be deprived of . . . due process of law—that is, he must be served with notice of the proceeding, and have a day in court to make his defence."

CONCLUSION

For the foregoing reasons, it is respectfully requested that this Petition for Writ of Certiorari be granted.

Respectfully submitted,



A. L. CROUCH, *pro se*
Judge of County Probate Court
Tarrant County Courthouse
Fort Worth, Texas

CERTIFICATE OF SERVICE

This is to certify that on the 28th day of January, A.D., 1966, a true and correct copy of the foregoing Petition for Writ of Certiorari to the Court of Civil Appeals for the Eleventh Supreme Judicial District of Texas, at Eastland, was served upon the Hon. Al Clyde, of the law firm of Clyde, Hines, Craig & Caufield, Union Bank Building, Fort Worth, Texas, counsel for Respondent, by depositing a copy thereof in the United States mail, certified or registered return receipt requested, addressed to him at his foregoing last known address.

A. L. CROUCH, *Pro Se*

APPENDIX 1

THE FORT WORTH PRESS, DECEMBER 30, 1960

Stanley Removed As Administrator

Probate Judge A. L. Crouch ruled today that Ollie Stanley, the bank appraiser who slapped and kicked him, was guilty of "gross misconduce" while managing an estate.

Judge Crouch said that Mr. Stanley:

1. Got cash to which he was not entitled as a result of "misrepresentations" he made.

2. Sold South Side property owned by the estate to a friend for a "grossly inadequate" price.

As a result, Judge Crouch said, he has removed Mr. Stanley as administrator (manager) of the William Roy Greene estate.

MR. STANLEY announced promptly that he would appeal to a district court.

Mr. Stanley slapped Judge Crouch and kicked him several times during the controversy over management of the estate. Judge Crouch said he did not let that incident, which took place in the Courthouse basement, influence him in his decision to remove Mr. Stanley.

Judge Crouch signed a five-page judgment in which he details his findings.

THE JUDGMENT states:

1. Mr. Stanley misrepresented the size of the estate so that he could pay himself $400 in fees to which he was not entitled. He took the money "wrongfully and fraudulently."

2. Mr. Stanley arranged for C. C. Peters, an attorney who had been his friend for 50 years, to buy land owned by the estate for a "grossly inadequate" price. Mr. Stanley got court approval to sell the land at Rosedale and Grainger for $7500 although it may have been worth as much as $18,000.

3. Four appraisers, whom Mr. Stanley says he consulted before recommending the sale, were interested in the property themselves and were disqualified from testifying about its value.

The appraisers included Atty. Clyde Mays; Buddie Thompson, a former city councilman; Art Anderson and W. P. Allen. Judge Crouch noted in the judgment that Mr. Mays had been a friend of Mr. Stanley 40 years.

JUDGE CROUCH noted also that there was testimony that Mr. Thompson and Mr. Anderson offered to buy the property and Mr. Allen offered to act as an agent in selling it.

Judge Crouch also took a swipe at two attorneys in the case, Jack Ray and Eva Barnes. He said neither informed him that the South Side property might be worth $18,000 — a price once offered for it — "although they were under a duty to do so."

Judge Crouch appointed Mr. Greene's widow, Mrs. Winona Greene, to replace Mr. Stanley. He also granted her a widow's allowance of $1500, saying Mr. Stanley had failed to help her get cash to which she was entitled.

APPENDIX 2

THE FORT WORTH PRESS, APRIL 7, 1964

Suit Charges Judge Insane

The fight between Atty. Al Clyde and Probate Judge A. L. Crouch erupted into charges of insanity against the judge today.

Judge Crouch commented back that "one of the biggest papers in the East—the Baltimore Sun—said Abraham Lincoln was insane just before he took office.

"This is merely a wild attempt by Al Clyde and Ollie Stanley to cloud over the sale of property valued at $18,000 for $7500 to a friend of Ollie Stanley."

Mr. Stanley is the administrator of an estate represented by Mr. Clyde, who is seeking a district court order forcing Judge Crouch to hold a final accounting of the estate.

Before today's hearing Mr. Clyde filed an affidavit in 153rd District Court saying Judge Crouch's conduct shows him to be "of unsound mind" and the judge should "be looked on with pity, as his mental condition justifies."

Mr. Clyde asked that a guardian be appointed for the judge. His affidavit talked about schizophrenia and paranoia and said the judge's "conduct and wild mouthings demonstrate the classic saying that the lawyer who represents himself has a fool for a client."

Earlier, Judge Crouch asked for a court order removing Mr. Clyde as an attorney in the case, claiming the attorney is "not representing the best interests of an estate which has been plundered. . ."

FORT WORTH STAR-TELEGRAM
Wednesday Morning, April 8, 1964

2 Guardians Appointed for Judge

BY ED HORN

Judge Harold Craik of 153rd District Court appointed two attorneys Tuesday to serve as guardians ad litem for Probate Judge A. L. Crouch.

The attorneys, Ernest May and Thorp A. Andrews, were instructed to represent Crouch in a lawsuit which was scheduled for hearing Tuesday before Judge Craik.

"The pleadings filed by the respondent (Crouch) in this case suggest that his judgment and reasoning are so seriously impaired I am going to appoint a guardian ad litem," Judge Craik announced.

He opened the hearing saying he did not want to do what he was about to but "I'd feel remiss in my duty as a judge if I didn't do it."

• • •

JUDGE CROUCH was on his feet objecting as soon as the district judge said his judgment and reasoning were impaired.

"I think this is the most infamous statement ever to come from a bench in Texas," he said. "You're declaring me insane without a jury."

Replied Craik, "I feel that, personally, you are mentally ill." But, he added, "I'm not adjudging you incompetent."

"This is contrary to the American Constitution; this is contrary to the American way of things," insisted Crouch.

"When a district judge appoints you an ad litem," said Craik, "he doesn't declare you incompetent or insane, he just shows doubts about you."

Crouch called the action a "travesty on justice," a "tragedy" and a "political conspiracy."

Judge Craik left the bench and the courtroom was silent for a few seconds.

• • •

THEN, ATTORNEY Al Clyde, who filed the suit against Crouch in behalf of an heir of the William Roy Greene estate, turned to Judge Crouch.

"The next time you charge anybody with being a thief, you better do it where you can answer to it," said Clyde.

The attorney referred to a motion in which Crouch requested removal of Clyde as attorney in the case. Crouch contended that Clyde had allowed the sale of some real estate of the estate at too low a price.

In other motions filed Monday, Crouch requested a jury trial, a continuance, appointment of a guardian for minor heirs of the estate and a rule of costs against Ollie Stanley, onetime administrator of the estate whose status is not now clear.

Crouch filed motions Tuesday seeking dismissal of the lawsuit and asking Judge Craik to disqualify himself.

The jurist insisted after Craik's announcement that the district judge could not appoint him a guardian ad litem before acting on the request that he disqualify himself.

• • •

JUDGE CRAIK indicated he will be more than willing to disqualify himself if the guardians ask him to.

He reset the hearing for Thursday, saying he would postpone it until later if May and Andrews felt they needed more time.

In the request that Craik disqualify himself, Crouch contended the district judge had "attempted to intimidate this defendant . . . by an outburst of invective and profanity" into approving an annual account in a case in which Craik was guardian of an incompetent veteran.

He asked Judge Craik to ask Governor Connally to appoint a judge to hear the lawsuit.

Crouch said he feared Craik would otherwise transfer the case "to some sympathetic political crony who will not give this defendant the fair and impartial trial to which he is entitled."

Crouch left the courtroom Tuesday after telling reporters, "This is an intolerable act of tyranny. I refuse to submit to it."

Asked his plans, the jurist said, "My next move is to be on hand in the morning to

Turn to Crouch on Page 2

Crouch

Continued From Page 1

perform the duties of my office."

He still insisted that he did not need a guardian.

• • •

CROUCH SAID his family physician told him "there is nothing wrong with me mentally."

The physician, who asked that his name not be used, told the Star-Telegram, "As far as I'm concerned I've been taking care of A. L. Crouch for a long time and I can't see anything upsetting about him."

A-3
APPENDIX 3
THE FORT WORTH
STAR-TELEGRAM
APRIL 8, 1964

APPENDIX 4

THE FORT WORTH PRESS, JULY 15, 1964

Judge Crouch Blistered By District Judge Craik

Probate Judge A. L. Crouch today became the object of a blistering attack in a legal document he himself had requested.

Dist. Judge Harold Craik, who ruled against the probate judge in a contested estate hearing last month, charged that the estate is being wasted because of "incompetence and stupidity on the part of Judge Crouch"

"It is the general opinion of lawyers and psychiatrists appearing in his court that the respondent (Judge Crouch) is mentally ill," Judge Craik wrote in a finding of fact.

Judge Craig also refuted charges that he was appointed to the bench by one man in a political machine as Judge Crouch has charged. The district judge said he was appointed by the governor on the recommendation of the 600 lawyers in Tarrant County.

He concluded that Judge Crouch has acted in a capricious and arbitrary manner and was motivated by personal animosity.

After Judge Craik's statement, Judge Crouch brought two psychiatrists and a lawyer to his office. The lawyer reported that both psychiatrists stated that they found Judge Crouch to be neither incompetent nor mentally ill.

APPENDIX 5

THE FORT WORTH PRESS, OCTOBER 6, 1964

Attorney Raps Sanity Decision By '12 Laymen'

Attorney Al Clyde today said he doesn't believe it's morally right for 12 laymen to determine the sanity of any person.

Mr. Clyde, defense attorney for condemned slayer Clifford Carroll, who was found to be sane, said he definitely favors changing the criminal laws now governing sanity issues in capital punishment cases.

Mr. Clyde explained that the science of psychiatry is too complex for the average citizen to understand. He said the sanity of any accused person believed to be mentally ill should be determined by a panel of three qualified psychiatrists.

The defense attorney, who will file a motion for a new trial for Carroll Friday, noted that a man cannot be found mentally ill in a non-criminal case without the expert opinions of at least two qualified physicians.

In Carroll's case, one doctor said he was insane and could not distinguish between right and wrong. Two other physicians testified he was disturbed, but sane under Texas law.

APPENDIX a

THE TEXAS RULES OF CIVIL PROCEDURE, RULE 173

When a minor, lunatic, idiot or a non-compos mentis may be defendant to a suit and has no guardian within this State, or where such person is a party to a suit either as plaintiff, defendant or intervenor and is represented by a next friend or a guardian who appears to the court to have an interest adverse to such minor, lunatic, idiot or non-compos mentis, the court shall appoint a guardian ad litem for such person and shall allow him a reasonable fee for his services to be taxed as a part of the costs.

APPENDIX b

THE TEXAS CONSTITUTION, ART. 5, SEC. 25

The Supreme Court shall have power to make and establish rules of procedure not inconsistent with the laws of the State for the government of said court and the other courts of this State to expedite the dispatch of business therein. As amended Aug. 11, 1891, proclamation Sept. 22, 1891.

APPENDIX c

THE TEXAS CONSTITUTION, ART. 1, SEC. 15A

No person shall be committed as a person of unsound mind except on competent medical or psychiatric testimony. The Legislature may enact all laws necessary to provide for the trial, adjudication of insanity and commitment of persons of unsound mind and to provide for a method of appeal from judgments rendered in

such cases. Such laws may provide for a waiver of trial by jury, in cases where the person under inquiry has not been charged with the commission of a criminal offense, by the concurrence of the person under inquiry, or his next of kin, and an attorney ad litem appointed by a judge of either the County or Probate Court of the county where the trial is being held, and shall provide for a method of service of notice of such trial upon the person under inquiry and of his right to demand a trial by jury. Added Nov. 6, 1956.

APPENDIX I

DEFENDANT'S MOTION FOR NEW TRIAL 153RD DISTRICT COURT

The trial court erred in granting plantiff's motion to appoint a guardian ad litem for this defendant, without notice, jury, or hearing, based solely on consideration of the ex-parte affidavit of Al Clyde, a brother attorney, alleging that A. L. Crouch is "of unsound mind" and "guilty of wild mouthings . . . asinine statements or actions . . . the abortions of a diseased mind attempting to give birth to a lucid, legal defense and justification for his insane conduct." (TR 54)

This defendant was not served with notice of such application, he was not allowed a jury trial, he was not allowed to be heard in his own defense, and not one word of evidence was introduced into the record from either lay or medical witness to justify the judicial determination of incompetency. (TD 56)

The trial court erred in proceeding to trial on the hearing of this cause without personal service of cita-

tion on this defendant, as required by law, and without giving him an adequate opportunity of preparing his defense. (TR 61)

APPENDIX II

APPELLANT'S SECOND SUPPLEMENTAL BRIEF COURT OF CIVIL APPEALS

(1) Appellant was denied his constitutional right of reasonable time to prepare a defense to the lawsuit against him. (pp. 1-2)

(2) Appellant was denied his constitutional right of a fair and impartial hearing in a fair and impartial tribunal. (pp. 3-5)

(3) Appellant was denied his constitutional right to represent himself by having a court appointed lawyer forced upon him against his will. (pp. 6-9)

(4) Appellant was denied his constitutional right to be heard in his own defense. (pp. 10-11)

(5) Appellant was denied his constitutional right to trial by jury. (pp. 12-17)

APPENDIX III

APPELLANT'S MOTION FOR REHEARING COURT OF CIVIL APPEALS

14-B. The Court of Civil Appeals erred in sustaining the Trial Court's refusal to grant Appellant a jury trial on the merits of the mandamus lawsuit (as well as on the determination of his competency), contrary to the guarantees of the Texas Constitution, Art. I,

Sec. 5; Art. V, Sec. 10; and by the Constitution of the United States of America, Amendments VII and XIV.

14-C. The Court of Civil Appeals erred in sustaining the Trial Court's denial of Appellant's constitutional right to be heard in his own defense, to present witnesses, and to interrogate witnesses upon whose evidence the decree was based, by an arbitrary usurpation of the authority to determine him incompetent without notice, evidence or jury trial.

14-D. The Court of Civil Appeals erred in sustaining the Trial Court's denial of Appellant's constitutional right to represent himself by having court appointed lawyers forced upon him against his will, because it would be "quieter that way."

APPENDIX IV

PETITIONER'S APPLICATION FOR WRIT OF ERROR SUPREME COURT OF TEXAS

I. The Court of Civil Appeals erred in sustaining the trial court's denial to Petitioner of his constitutional right to adequate notice and reasonable time to prepare a defense to the lawsuit against him and a reasonable and fair opportunity of being heard in his own defense. pp. 1-7)

II. The Court of Civil Appeals erred in sustaining the trial court's denial to Petitioner of his constitutional right to trial by jury. (pp. 8-16)

III. The Court of Civil Appeals erred in sustaining the trial court's denial to Petitioner of his constitutional right to a fair and impartial hearing in a fair and impartial tribunal. (pp. 17-24)

APPENDIX V

PETITIONER'S MOTION FOR REHEARING SUPREME COURT OF TEXAS

. . . Petitioner complains that he was denied his Constitutional right to a fair and impartial hearing in a fair and impartial tribunal. In support of his position, Petitioner repeats that he was not only denied adequate notice and reasonable time to prepare a defense to the lawsuit against him and a reasonable and fair opportunity of being heard in his own defense, but he was also denied his Constitutional right to trial by jury, not only on the merits of the mandamus case but on the very question of his mental competency. (p. 3)

APPENDIX A

JUDGMENT OF 153RD DISTRICT COURT

No. 34055-C

IN THE DISTRICT COURT OF
TARRANT COUNTY, TEXAS
153rd JUDICIAL DISTRICT

EDWARD J. GREENE

vs.

A. L. CROUCH

JUDGMENT

On this the 24th day of April, A. D. 1964, came on to be heard the above styled and numbered matter, wherein Edward J. Green is relator and Ollie Stanley is a relator, and A. L. Crouch, Probate Judge in and

for Tarrant County, Texas is respondent; the relators being present in person and with counsel, and the respondent having appeared personally, refused to take any part in the proceedings, was represented by Ernest May as attorney ad litem, and all motions filed by the respondent having been considered by the Court, the same were in all things denied, to which action by the Court the respondent excepted in open Court; the Court proceeded to hear testimony and was of the opinion that the relator, Ollie Stanley, the administrator of the estate of William Roy Greene, deceased, (but not the relator Greene) was entitled to the relief sought for the reason that he had filed his final accounting on August 19, 1963 and the respondent had taken no action thereon; the Court was of the opinion that the respondent should be required to comply with the terms of Article 407 of the Probate Code of Texas, and that the respondent should set a time and place when such accounting would be considered by him, and further that the respondent should determine to whom notices should be directed by written order, that those things shall be done by the respondent so as to hold a hearing not later than thirty (30) days from April 24, 1964; the Court is of the further opinion that the respondent should have an additional thirty (30) days from the date of the hearing to comply with Article 408 of the Probate Code of Texas and audit and settle the same or restate the account if the same be necessary;

IT IS ACCORDINGLY ORDERED, ADJUDGED AND DECREED BY THE COURT that the Clerk of this Court issue a Writ of Mandamus to the respon-

dent, A. L. Crouch, ordering him to set a time and place when the final accounting filed by Ollie Stanley, administrator of the estate of William Roy Green, deceased, on August 19, 1963, would be considered by him, and further ordering the respondent, A. L. Crouch to determine to whom notices should be directed by written order, further ordering that these things should be done by the respondent A. L. Crouch so as to hold a hearing not later than thirty (30) days from April 24, 1964.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that the respondent, A. L. Crouch, should have an additional thirty (30) days from the date of the hearing to comply with Article 408 of the Probate Code of Texas and audit and settle the same or restate the account if the same be necessary.

SIGNED this 30th day of April, A. D. 1964.

JUDGE
/s/ Harold Craik

APPROVED AS TO FORM:
/s/ Al Clyde
Attorney for Relators
/s/ Ernest May
Attorney Ad Litem for Respondent
A Certified Copy
Attest 5-1-1964
George Johnson
District Clerk, Tarrant
County, Texas
By /s/ Sally B. Moran
Deputy (Seal)

APPENDIX B

OPINION OF COURT OF CIVIL APPEALS

A. L. Crouch, Probate Judge,

Appellant

Vs.

No. 3952.

Ollie Stanley, Administrator,

Appellee

Appeal from the 153rd District Court of Tarrant County.

Edward J. Green, an heir of the estate of William Roy Green, deceased, instituted this proceeding against A. L. Crouch, Probate Judge of Tarrant County, praying for a writ of mandamus to require the Probate Judge to cause notice to issue for the purpose of holding a hearing on the final accounting of Ollie Stanley, administrator of the estate of said William Roy Green, deceased; to require that the Probate Judge hold such a hearing and either approve or disapprove the account filed by the said administrator. Ollie Stanley as administrator thereafter filed a plea of intervention and prayed for the same relief sought by the original

Edward J. Green

petitioner, William Roy Green. Judge Crouch filed a number of pleas in abatement and denial and various other motions, including a motion for jury trial.

Upon a hearing of the cause the various motions and pleadings of the respondent, Judge Crouch, were overruled and he refused to take further part in the proceedings. The court then proceeded with a hearing on the merits. The Honorable Ernest May, who had been appointed as attorney ad litem for the respondent represented him in the continuation of the trial. After hearing the testimony the court found that the petitioner, Edward J. Green, was not entitled to the relief prayed for. The court further found, however, that Ollie Stanley, the administrator of the estate of William Roy Green, deceased, was entitled to the relief sought by him; that he had filed his final accounting on August 22, 1963, and that the respondent probate judge had failed and refused to take any action thereon. The court found that the respondent should be required to comply with the terms of Article 407 of the Probate Code of Texas and set a time and place when such accounting would be considered by him, and that respondent should determine to whom notices should be directed by written order and in compliance with article 408 of the Probate Code to hold a hearing upon the matter and audit and settle or restate the account "if the same be necessary." The court also filed findings of fact and conclusions of law.

The court found as a matter of law that respondent was not entitled to a jury trial; that the appointment of attorneys ad litem was proper under all the facts and circumstances; that the trial court was not disqualified to hear the case; that the action of respondent in failing and refusing to take any action on the final account filed by the administrator was capricious and arbitrary and a clear abuse of discretion; that the intervenor, Ollie Stanley, as administrator, was en-

titled to relief by way of mandamus to require the respondent to act and rule upon the final account of the administrator, and that the petitioner Edward J. Green, should be denied the relief for which he prayed. The respondent, Judge A. L. Crouch, gave notice of appeal. The appeal has been transferred to this court by order of the Supreme Court of Texas. We overrule appellant's contention that the trial court was disqualified to hear the case. We are of the opinion from a consideration of the record as a whole that the action of the court in appointing an attorney ad litem does not constitute reversible error.

Appellee alleged and there is ample evidence showing that he is the duly appointed, qualified and acting administrator of the estate of William Roy Green, deceased. We overrule appellant's contention to the contrary. Appellee has served in such capacity since February of 1959. He was removed as administrator by the Probate Judge but appealed to the 48th District Court of Tarrant County. The trial in the District Court in such cases is de novo and the burden was on those who sought to remove the administrator to proceed. No further action has been taken although the appeal has been pending for about three years. Pending hearing and final judgment in the District Court appellee retained his status as administrator. Crouch v. Stanley, 348 SW 2d 543.

Appellee alleged and the evidence shows that on August 22, 1963, the administrator filed his final account and prayed that the required notices be given, a time set for hearing and action taken by the Probate Judge as provided by sections 407 and 408 of the Probate Code. Article 407 of the Probate Code which con-

cerns citation upon presentation of an account for final settlement makes provisions for notice including the following:

"1. *In case of the estates of deceased persons, such notice as shall be directed by the court by written order.*"

"5. *If the court deems further additional notice necessary, including publication, it shall require the same by written order.*"

Article 408 *Probate Code, provides as follows:*

"(*a*) *Upon being satisfied that citation has been duly served upon all persons interested in the estate, the court shall examine the account for final settlement and the vouchers accompanying the same, and, after hearing all exceptions or objections thereto, and evidence in support of or against such account, it shall audit and settle the same, and restate it if that be necessary.*"

Article 407, supra, calls for positive action by the court upon the filing of the final account and does not leave the court any discretion as to the requirement for the issuance of notice for a hearing, and for action to be taken as required by Article 408. We overrule appellant's contention that the matter of notice and hearing was within his discretion. Appellant's duty under the circumstances was ministerial and he was not legally justified in his refusal to require the issuance of notice and to hold a hearing. Crouch v. Shields, 385 SW 2d 580, (Ref. N.R.E.). Appellee alleged the existance of such facts and his petition was not fatally defective. The petition was properly verified, showed a clear right to the relief sought, a present compelling

necessity therefor, and a clear duty on the part of the appellant Probate Judge which he refused to perform.

We overrule appellant's point contending that the jurisdiction of the District Court in probate matters is limited to appellate jurisdiction and that the mandamus granted by the District Court in the instant case was beyond the power and jurisdiction of that court. District Courts are vested with authority to issue original writs of mandamus under the provisions of Article V, Sec. 8 of the Constitution of Texas. A District Court has jurisdiction to entertain a petition for a writ of mandamus under proper circumstances, one of such circumstances being where, as here, there has been a failure of a public official to perform a ministerial duty. Crouch v. Shields, supra; Alice National Bank v. William R. Edwards, 383 SW 2d 482, and cases cited therein.

We also overrule appellant's contention that the court erred in refusing his request for a jury. The pleadings raised no material issue of fact for jury determination. The material issue involved under the pleadings is whether appellant failed and refused to perform a ministerial duty imposed upon him by the Probate Code. As heretofore noted the record shows that the administrator has filed his final account and shows, which appellant does not deny, that he has failed and refused to act upon the final account filed by the administrator. Appellant seeks only to justify his failure and refusal to act. This presents questions of law for the court and does not involve an issue of fact for a jury.

Appellant alleged and the evidence shows that since the filing of said final account and up until the filing

of this suit on March 24, 1964, and until the time of the trial respondent has continuously failed and refused to take any action upon the matter and has failed to cause the required notices to issue or to set a hearing or to make any ruling upon said account, either by approving, disapproving, auditing and restating the same, or entering an order refusing to consider such account. Stated otherwise, the record shows that appellant Probate Judge has failed to perform a ministerial duty required by the Probate Code of Texas. Appellant does not deny his refusal to act, but, rather confirms the fact of his refusal by urging numerous reasons why he should not be required to do so.

We cannot agree with appellant's contention that the mandamus was not proper in that the evidence shows no demand upon him for any of the relief sought before the filing of this suit. The undisputed evidence shows the filing of the account by the administrator, shows a letter to the Probate Judge from the attorney of the administrator specifically requesting the Judge to permit the submission of the final account, requesting that the court cause proper notices to issue and offering if the court desired to prepare such proper notices as the court might direct.

What the District Court did was to direct appellant as Probate Judge to cause notices to be issued and to hold a hearing as required by Sections 407 and 408 of the Probate Code. There was no attempt by the District Court to tell the Probate Court what action should be taken upon such hearing, but only that the notices should issue, that the hearing should be held and that some disposition be made of the final account. The ultimate and only material question on this appeal is

whether such action by the District Court is proper. In our opinion it was.

Numerous other matters and contentions are shown in the record and are here urged which, in our opinion, are not material to the determination of the appeal. It would serve no purpose to enumerate and discuss such matters which would only encumber the record. We have carefully considered the entire record and are of the opinion that the action of the District Court in granting the mandamus was proper.

The judgment is affirmed.

PER CURIAM

April 30, 1965.

THE STATE OF TEXAS,

COUNTY OF EASTLAND,

I, HOMER SMITH, Clerk of the Court of Civil Appeals in and for the Eleventh Supreme Judicial District of Texas, do hereby certify that the above and foregoing is a true and correct copy of the original opinion of this Court in the above styled and numbered cause, as the same appears now on file in my said office.

GIVEN under my hand and seal of office this the 24th day of November, 1965.

HOMER SMITH, Clerk

/s/ By: Homer Smith

/SEAL/

APPENDIX C

ORDERS OF SUPREME COURT OF TEXAS

IN THE SUPREME COURT OF TEXAS

No. A-10, 915

October 6, 1965

A. L. CROUCH, Probate Judge

vs.

OLLIE STANLEY, Administrator

From Tarrant County, Eleventh District

Application of petitioner for writ of error to the Court of Civil Appeals for the Eleventh Supreme Judicial District having been duly considered, and the Court having determined that the application presents no error requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that said application be, and hereby is, refused.

It is further ordered that applicant, A. L. Crouch, Probate Judge, pay all costs incurred on this application.

A-21

November 3, 1965

No. A-10, 915

A. L. CROUCH, Probate Judge

vs.

OLLIE STANLEY, Administrator

From Tarrant County, Eleventh District

Petitioner's motion for rehearing of application for writ of error having been duly considered, it is ordered that said motion be, and hereby is, overruled.

I, GEO. H. TEMPLIN, Clerk of the Supreme Court of Texas, do hereby certify that the above and foregoing is a true and correct copy of the orders of the Supreme Court of Texas in the case numbered and styled as above, as the same appears of record in the minutes of said Court under the dates shown.

WITNESS my hand and the seal of the Supreme Court of Texas, at the City of Austin, this, the 23rd day of November, 1965.

GEO. H. TEMPLIN, Clerk

/s/ By Eugene Cervenka, Deputy

/SEAL/